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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

EBAY INC., Plaintiff, vs. DIGITAL POINT SOLUTIONS, INC.; SHAWN HOGAN; KESSLER's FLYING CIRCUS; THUNDERWOOD HOLDINGS, INC.; TODD DUNNING; DUNNING ENTERPRISES, INC.; BRIAN DUNNING; BRIANDUNNING.COM; and DOES 1-20, Defendants.	CASE NO. CV 08-4052 JF (PVT) **OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO EXCEED PAGE LIMIT FOR CONSOLIDATED OPPOSITION**

Defendants Kessler's Flying Circus, Thunderwood Holdings, Inc., Brian Dunning and BrianDunning.com (collectively, "KFC Defendants") oppose Plaintiff's request that it be given leave to exceed the page limit in opposing the Motions to Dismiss the Second Amended Complaint filed by the various defendants named in this action.

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Contrary to Plaintiff's unsupported contention, the party defendants did not "rely on each other to cover all the arguments they wished to advance." The various party defendants constitute distinct groups and have made differing arguments supporting the dismissal of the Second Amended Complaint. However, to the extent Plaintiff believes that all motions advance "the same five arguments," then Plaintiff should not need more than 25 pages to address the purportedly repeat arguments. Indeed, each defendant group was able advance their respective arguments while staying within the page limit.

Allowing Plaintiff leave to file a 35 page consolidated opposition will prejudice the KFC Defendants. Due to the short briefing schedule at hand, the KFC Defendants will have a very short period of time to reply to 35 pages of briefing. On the other hand, Plaintiff is not prejudiced if it files a separate opposition to each motion. Indeed, Plaintiff's motion is devoid of any evidence establishing cause or prejudice requiring extended briefing.

As such, the KFC Defendants respectfully request that Plaintiff's request for leave to exceed the opposition brief page limit be denied.

DATED: June 1, 2009

Respectfully submitted,

RUS, MILIBAND & SMITH
A Professional Corporation

By: ______________________
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DATED: June 1, 2009

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